
(2014) 10 SHI CK 0053
In the High Court Of Himachal Pradesh
Case No : LPA No. 125 of 2014

Delux Enterprises

APPELLANT

Vs

H.P. State Electricity Board Ltd.

RESPONDENT

Date of Decision : 21-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227, 38

Citation : (2014) 10 SHI CK 0053

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Piar Singh Rana, J

Bench : Division Bench

Advocate : Ajay Sharma, Advocate for the Appellant; Satyen Vaidya, Advocate for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.—This Letters Patent Appeal is directed against the judgment and order, dated 6th June, 2014, passed by the learned Single Judge in a writ petition, being CWP No. 4465 of 2009, titled as M/S. Deluxe Enterprises versus H.P.S.E.B. & others, whereby the writ petition filed by the appellant-writ petitioner came to be dismissed (hereinafter referred to as "the impugned judgment").

2. Heard.

3. The appellant-writ petitioner invoked the jurisdiction of this Court by the medium of CWP No. 4465 of 2009 for issuance of writ of certiorari quashing orders made by the respondents-authorities, dated 18th April, 2007 (Annexure P-1); Annexure P-2, dated 29th January, 2008; Annexure P-3, dated 5th August, 2008 and Annexure P-8, dated 19th November, 2009; also sought writ of mandamus commanding the respondents to levy/charge the demand from it with effect from 1st November, 2001 to 20th August, 2004 on the basis of maximum recorded demand during the said period, on the grounds taken in the memo of writ petition.

4. Precisely, the case of the writ petitioner is that the orders impugned in the writ

petition have been made by the respondents-authorities, i.e. The Zonal Level Dispute Settlement Committee, Forum for Redressal of Grievances of Consumers of HPSEB, Himachal Pradesh Electricity Ombudsman, on forged documents-bills, thus, are illegal and is not liable to be charged/levied on the basis of contract demand; the action of the respondents-authorities is violative of Articles 14 and 16 of the Constitution of India for the reason that all other units and firms have been levied/charged on the basis of maximum recorded demand for the month.

5. The respondents have resisted the petition by the medium of reply and have raised the objection that the writ petition was not maintainable.

6. The learned Single Judge held that the writ petitioner is bound to make the payment as per the prevailing rates of electricity tariff and is bound by the contract, as contained at page 109 of the paper book.

7. The learned Single Judge has not discussed as to whether the writ petition was maintainable. It appears that the disputed questions of facts are involved in the writ petition and it is a moot question as to whether the writ was maintainable or not?

8. The writ petition, on the face of it, is not maintainable for the reason that the writ petitioner has not questioned the order dated 18th April, 2007, passed by the Zonal Level Dispute Settlement Committee (Annexure P-1); order dated 29th January, 2008, passed by the Forum for Redressal of Grievances of Consumers of HPSEB (Annexure P-2) and orders, dated 5th August, 2008, passed by the Himachal Pradesh Electricity Ombudsman (Annexure P-3) and order, dated 19th November, 2009, (Annexure P-8) passed by the Himachal Pradesh Electricity Ombudsman, on the petition for review/recalling the order, dated 5th August, 2008, on the ground that the respondents-authorities have no jurisdiction to make these orders.

9. The authorities have exercised the powers and jurisdiction as vested with them in terms of the law applicable.

10. The dispute raised, at the cost of repetition, is that as to at what rate, the tariff was to be levied and demand was to be made, which is a disputed question of fact, cannot be gone into in a writ petition. It is also not the case of the writ petitioner that the orders have been passed on any inadmissible evidence or on the documents which are not legal. Thus, the writ petition, on the face of it, was not maintainable.

11. The Apex Court in a series of cases held that the orders made by the Tribunals and other quasi-judicial authorities/functionaries cannot be questioned by the medium of writ petition unless the orders have been passed without jurisdiction or in breach of the provisions of the mandate of law.

12. This Court in a series of cases, being CWP No. 4622 of 2013, titled as M/s. Himachal Futuristic Communications Ltd. versus State of H.P. and another, decided on 4th August, 2014; LPA No. 485 of 2012, titled as Arpana Kumari

versus State of H.P. and others, decided on 11th August, 2014; and LPA No. 23 of 2006, titled as Ajmer Singh versus State of H.P. and others, decided on 21st August, 2014, while relying upon the latest decision of the Apex Court in Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Ltd., , has held that question of fact cannot be interfered with by the Writ Court. However, such findings can be questioned if it is shown that the Tribunal/Court has erroneously refused to admit admissible and material evidence or has erroneously admitted inadmissible evidence which has influenced the impugned findings. It is apt to reproduce paras 16, 17 and 18 of the judgment rendered by the Apex Court in Bhuvnesh Kumar Dwivedi's case (supra) herein:

"16..... The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.....

17. The judgments mentioned above can be read with the judgment of this court

in Harjinder Singh Vs. Punjab State Warehousing Corporation, , the relevant paragraph of which reads as under:

"21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

"10. ... The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State." The State of Mysore Vs. The Workers of Gold Mines,

18. A careful reading of the judgments reveals that the High Court can interfere with an Order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court granting contrary relief under Articles 226 and 227 of the Constitution amounts to exceeding its jurisdiction conferred upon it. Therefore, we accordingly answer the point No. 1 in favour of the appellant."

[Emphasis added]

13. On this count only, the writ petition merits to be dismissed.

14. We have gone through the orders impugned in the writ petition, have been passed by the respondents-authorities as per the authority vested with them, cannot be said to be orders without jurisdiction.

15. All the authorities have made the orders legally, are not suffering from any patent error or mistake and it is not the case of the appellant that the findings are based on inadmissible evidence, thus, the findings returned cannot be said to be erroneous.

16. The impugned judgment is well reasoned and speaking one. It is apt to reproduce relevant portion of the impugned judgment herein:

"5..... The respondents by applying the two way mode, of levying

electricity tariff, in as much, as, by raising demand, both, qua the energy charges, as well, as qua demand charges, its, hence, constituting and comprising the prevalent rates of levy of tariff which mode of rates of tariff has been accepted by the petitioner in a concluded contract inter-se the parties at contest. Therefore, the petitioner-unit is estopped from contending that the levy of tariff on the prevalent rates comprised, in Annexure RS-F are either arbitrary or capricious, rather the raising of electricity tariff by the respondents for the electricity consumed by the petitioner-unit is anvil upon firm and formidable material existing on record....."

17. Having glance of the above discussions, the appeal as well as the writ petition merit to be dismissed and the impugned judgment merits to be upheld.

18. Having said so, the appeal is dismissed alongwith all pending applications.